

8 | Grievance Procedures

I. General Information

- A.** The City of Lynchburg supports prompt and fair methods for resolving complaints and grievances of its employees. Employees whose grievances, as defined herein, result from work situations deserve and have the right to submit such grievances for orderly resolution with freedom from discrimination, coercion, recrimination, restraint, retaliation or reprisal. In addition, resolving grievances quickly and equitably promotes effective employer-employee relationships and is in the mutual interests of all affected parties.
- B.** This policy sets forth the general procedures for the administration and resolution of all grievable employment disputes, as defined in subsequent paragraphs. Reasonable efforts will be made to resolve employee complaints and grievances on an informal basis at the lowest level of management possible.
- C.** All steps of the grievance procedure beyond the first step shall be in writing on forms supplied by the Human Resources Department. Personal face-to-face meetings are required at all steps of the procedure. At each step in the process, the grievant shall be prepared to present his or her view of the events which both preceded and followed the disputed action.
- D.** Persons who may normally be present in the grievance meetings are the grievant, the appropriate hearing official at the level at which the grievance is being heard, and appropriate witnesses for each side. Witnesses shall usually be present only while actually providing testimony. When witnesses are permitted to remain in the hearing for one side, witnesses for the other side shall also be permitted to remain.
- E.** At the third and fourth step of the procedure, the grievant may choose to have a representative of his or her choice present to provide assistance. If legal counsel represents the grievant; management may be represented by counsel. All costs for employee representation shall be borne by the employee. The grievant's representative or attorney shall be designated by the employee in writing at the time he or she presents the grievance in writing at the appropriate step. If another City employee is chosen as a representative and that person is willing to represent the grievant, he or she shall not be denied permission to do so unless the representation would contribute appreciably to the neglect of that person's regular duties, or would constitute a clear conflict of interest with his or her regular duties. For example, a staff member of the

City Attorney's Office whose regular duties may require them to advise management and employees on matters related to grievances shall not be allowed to act as employees' representatives. In no case will managerial or supervisory personnel act as an employee representative against City management.

- F.** In accordance with the non-public nature of a grievance hearing, any recording by tape or any other means is strictly prohibited without the consent of both parties. At the conclusion of each written step in the Grievance Procedure, the hearing officer will transmit the decision along with appeal forms and addenda to the grievant with copies to the immediate supervisor, the respective Department Director, and the Director of Human Resources.
- G.** As a grievance moves through the levels of appeal, an employee may not materially change the basic nature or content of his or her grievance after it is reduced to writing, nor may he or she change the relief sought. Further, an employee may not withhold available evidence from the early steps of the grievance procedure and then seek to introduce such evidence for the first time during the final steps of the grievance procedure. When processing any grievance to a higher step in the procedure, the grievant should recognize that each appeal will be handled as a hearing de novo in which the original dispute is the basis for the further appeal. Therefore, the hearing officer, panel or board will decide among three courses of action: (a) to uphold the original decision of the immediate supervisor; (b) to overturn the original decision; or (c) to modify the original decision.
- H.** Except in instances where grievances might arise within the Human Resources Department, the Director of Human Resources or designee shall act in a neutral manner in these proceedings. Upon request, the Director of Human Resources will counsel employees with regard to grievances. The Director shall be responsible for designing all necessary forms, making policy interpretations which might become necessary, issuing additional guidelines for the orderly administration of employee grievances in accordance with this Grievance Policy, and serving as Secretary to the Appeal Board and to the Grievance Panel. As provided within this policy, time limitations are designed to be fair and reasonable to both the grievant as well as to those individuals who will be involved in hearing and seeking the resolution of a grievance settlement at each successive step.

II. Coverage of Personnel

- A.** This policy governs the administration and processing of all grievances of the classified employees of the City of Lynchburg, excluding all personnel of the Lynchburg Public Schools and the Local Constitutional Offices.
- B.** All employees holding full- and part-time classified City of Lynchburg positions who have completed their initial employment period are eligible to file grievances with the following exceptions:

1. City Council appointees;
 2. Department Directors and their equivalents;
 3. Deputy City Manager(s);
 4. Assistant City Manager(s);
 5. Building Official able to elect Section 104.1, Part I, of the Uniform Statewide Building Code;
 6. Employees holding hourly and/or grant funded positions; and
 7. Law Enforcement Officers covered by the Law-Enforcement Officers Procedural Guarantee Act, Chapter 5, Sections 9.1-500 through 9.1-507, of Title 9.1 of the Code of Virginia who have elected to proceed pursuant to those provisions in the resolution of their grievance.
- C. The Director of Human Resources shall maintain an up-to-date list of the excepted positions. The current list is attached as Appendix A.

III. Definition of a Grievance

- A. A grievance shall be a complaint or dispute by an employee relating to his or her employment, including but not necessarily limited to:
1. Disciplinary actions including dismissals that result from formal discipline or unsatisfactory job performance, disciplinary demotions, suspensions, and reprimands;
 2. The application of personnel policies, procedures, rules and regulations;
 3. Acts of retaliation as the result of either the use of the grievance procedure or participation in the grievance of another city employee;
 4. Discrimination on the basis of race, color, creed, political affiliation, age, disability, national origin, religion or sex;
 5. Acts of retaliation because the employee has complied with any federal or state law, has reported any violation of such law to a governmental authority, or has sought any change in law before the Congress of the United States or the General Assembly or has reported an incident of fraud, abuse or gross mismanagement.

IV. Local Government Responsibilities - Management Rights

A. The City shall retain the exclusive responsibility to manage the affairs and operations of government. Accordingly, the following complaints are non-grievable:

1. Establishment and revision of wages or salaries, position classification or general benefits;
2. Work activity accepted by the employee as a condition of employment or work activity which may reasonably be expected to be a part of the job content;
3. The contents of ordinances, statutes or established personnel policies, procedures, rules and regulations;
4. Failure to promote except where the employee can show established promotional policies or procedures were not followed or applied fairly;
5. The methods, means and personnel by which such work activities are to be carried out;
6. The hiring, promotion, transfer, assignment, evaluation, counseling and retention of employees within the City government;
7. The relief of employees from duties of the City government in emergencies;
8. Voluntary resignation; and
9. Counseling sessions and/or counseling memo;
10. Note that when the actions above affect an employee who has been reinstated within the previous six months as the result of the final determination of a grievance, termination, layoff, demotion or suspension from duties because of a lack of work, reduction in work force or job abolition, they may be grievable.

B. In any grievance brought under the exception to provision 10 of subsection A., the action shall be upheld upon a showing by the City that:

1. There was a valid business reason for the action; and
2. The employee was notified of the reason in writing prior to the effective date of the action.

V. Determination of Grievability

- A.** The issue of grievability may occur at any step of the procedure prior to the Panel/ Board Hearing, but once raised, the issue must be finally resolved as provided herein before further processing of the grievance. Decisions regarding grievability and access to the procedure shall be made by the City Manager, or his designee, at the request of management or the grievant within 10 calendar days of such request. A copy of the ruling will be sent to the grievant. In all cases, the issue of grievability must be resolved prior to the Panel/Board Hearing or it shall be deemed to have been waived by management and the grievance shall be processed to conclusion.
- B.** It is the employee's responsibility to present evidence establishing the grievability of his or her complaint; conclusory statements that a matter is grievable are not sufficient. The failure of an employee to provide sufficient facts to demonstrate that the employee's complaint is in fact grievable, will result in a finding that the complaint is nongrievable.
- C.** The grievant shall have 10 calendar days to appeal a decision of non-grievability to the Circuit Court of the City of Lynchburg, Virginia for a hearing on the issue of grievability, as provided for in the Code of Virginia, Section 15.2-1507 A9a. Proceedings for review of the decision of the City Manager shall be instituted by filing a notice of appeal with the City Manager within 10 calendar days after the date of the decision and giving a copy thereof to all other parties. Within 10 calendar days thereafter, the Manager shall transmit to the Clerk of the Circuit Court of the City of Lynchburg and to the grievant the following:
1. A copy of the decision of the City Manager;
 2. A copy of the notice of appeal; and
 3. The exhibits.
- D.** A list of the evidence furnished to the Court shall also be furnished to the grievant. The failure of the City Manager to transmit the record within the time allowed shall not prejudice the rights of the grievant. The Court, on motion of the grievant, may issue a writ of certiorari requiring the City Manager to transmit the record on or before a certain date.
- E.** Within 30 calendar days of receipt of such records by the Clerk, the Court, sitting without jury, shall hear the appeal on the record transmitted by the City Manager, or his designee, and such additional evidence as may be necessary to resolve any controversy as to the correctness of the record. The Court, in its discretion, may receive such other evidence as the ends of justice may require. The Court may affirm the decision of the City Manager or his designee, or may reverse, or modify the

decision. The decision of the Court shall be rendered no later than the 15 calendar days from the conclusion of the hearing. The decision of the Court is final and is not appealable.

- F. The classification of a complaint as “nongrievable” shall not be construed to restrict any employee’s right to seek or management’s responsibility to provide customary administrative review of complaints outside the scope of this grievance procedure.

VI. Time Periods

All grievable employment disputes, as defined in the preceding paragraphs, must be processed through four steps of successive appeal and within the specified time limits, except as noted within this policy. For purposes of this Procedure, all time limits are stated in terms of “calendar days.” If the last day of any time limit falls on a Saturday, Sunday, or observed City holiday, the following regular weekday shall be considered the last day. Time frames may be extended by mutual agreement of the hearing officer and the grievant. The Grievance Panel or Board, at their discretion, or at the request of either party to the grievance, may extend any or all of the prescribed time periods applicable after the grievance is received by the Panel/Board. These time periods may be extended in writing based upon mutual agreement in advance by the two parties (the grievant and the individual hearing the complaint or grievance). The Panel or Board may, by mutual agreement with the grievant, continue the hearing.

VII. Compliance

- A. After the initial filing of a written grievance, failure of either party to comply with all substantial procedural requirements of the grievance procedure, including the panel or board hearing, without just cause will result in a decision in favor of the other party on any grievable issue, provided the party not in compliance fails to correct the non-compliance within 5 work days of receipt of written notification by the other party of the compliance violation.
- B. Such written notification by the grievant shall be made to the City Manager or his designee. The City Manager, or his designee, at his option, may require a clear written explanation of the basis for just cause extension or exceptions. The City Manager, or his designee, shall determine compliance issues. Compliance determinations made by the City Manager shall be subject to judicial review by the filing of a petition with the Circuit Court of the City of Lynchburg, Virginia within 30 days of the Compliance determination.

VIII. Relief Sought

Once an employee reduces his or her grievance to writing, he or she must include, in writing, the specific relief he or she expects to obtain through the use of the grievance procedure. The relief sought shall be personal to the grievant (e.g., the relief sought may not be the dismissal or discipline of another employee). The relief sought must be

consistent with the issues determined to be grievable under this procedure and may not be in conflict with the management rights section of this policy. The grievant may accept the relief granted at any step of the procedure and his or her grievance shall be considered resolved. However, prior to the Panel/Board Hearing, if the employee finds any part of the relief granted unacceptable, he or she must advance the entire grievance and relief sought to the next step of the procedure. The decision of the Panel/Board is final and binding.

IX. Waiver of Steps

Any of the steps in the grievance procedure, except the fourth step panel/board hearing, may be waived based upon the mutual written agreement of the grievant and the City Manager. A "Grievance Step Waiver Form", available from Human Resources or the City's Intranet site, must be completed and signed by the grievant and the City Manager prior to the required meeting(s) between the grievant and management and shall be included in the official grievance file maintained in the Human Resources Department.

X. Steps in the Grievance Procedure

The City grievance procedure contains four steps. In some cases, Step 1 and Step 2 may be addressed to the same individual due to the nature of the action being grieved. Regardless, both steps are necessary and must be completed in order, unless a waiver of steps has been approved.

STEP 1: Supervisor/Department Director Level

An employee who has a grievance shall orally present his or her initial complaint to his or her immediate supervisor (or to the acting supervisor in the absence of the immediate supervisor) or to the Department or Division Director if the grievance relates to a suspension, dismissal or policy decision, within 20 calendar days after the event giving rise for the grievance. It is the responsibility of the employee to inform the supervisor or director of his or her intention to formally grieve. An employee's complaint does not become an official grievance until the employee identifies it as such in a face-to-face meeting. The supervisor or director shall give the employee his or her verbal response within 10 calendar days after its presentation and shall develop and maintain written documentation of the date the meeting took place, the decision made and the date the decision was given to the employees. Each immediate supervisor shall keep appropriate accounts of the complaints that he or she receives.

STEP 2: Department Director Level

1. If the complaint is not resolved in Step 1, the employee may, within 10 calendar days of his/her supervisor's oral response, reduce the grievance to writing on an "Employee Grievance Form" and submit it to his or her respective Department Director (or to the acting Department Director in the Director's absence). This submission will be the aggrieved employee's explanation of what has occurred,

his or her reasons for rejecting the Step 1 response, and the specific relief that he or she desires for resolution of the grievance. If an employee chooses to grieve an action taken by a department to which the employee is not assigned, he or she shall submit the grievance form to the director of the department taking such action.

2. Within 10 calendar days of receipt of the completed grievance form, the Department Director (or the acting director in the director's absence) will meet with the grievant, the grievant's immediate supervisor and/or manager directly involved in issue, and appropriate witnesses, i.e. those persons having direct knowledge of the issue. If the grievant desires testimony by a witness(es) who is scheduled for City duty, he or she will notify the respective Department Director at least 24 hours in advance; and if a witness(es) is not scheduled for City duty, the grievant will be responsible for arranging the presence of this witness(es). The appearance of witnesses before the Department Director is strictly voluntary.
3. A written reply to the grievance signed by the Department Director shall be provided to the employee within 10 calendar days after the second step meeting. The grievance file, including all attachments shall be forwarded to the Human Resources Department following the second step decision.

STEP 3: City Manager Level

1. If the second step decision is not acceptable to the grievant, he or she shall have 10 calendar days after receipt of the decision in which to request a meeting with the City Manager, or his or her designee. The grievant must complete the "Step Three Grievance Form" and submit it to the Human Resources Department to request further consideration of his or her grievance. Human Resources shall record its submission and forward the grievance and related documents to the City Manager who may designate one or more individuals to assess and undertake its resolution.
2. The City Manager, or designee, shall meet with the aggrieved employee, the employee's immediate supervisor and/or manager directly involved in issue, the Department Director, and appropriate witnesses, i.e. those persons having direct knowledge of the issue, within 10 calendar days to discuss informally the particulars of the incident surrounding the grievance and the specific dispute for resolution.
3. If the grievant desires testimony by a witness(es) who is scheduled for City duty, he or she must notify the respective Department Director at least 24 hours in advance; and if a witness(es) is not scheduled for City duty, the grievant will be responsible for arranging the presence of this witness(es). The appearance of witnesses at the grievance hearing is strictly voluntary.

4. In addition to the presence of these persons, the aggrieved employee may elect to be accompanied by a representative of his/her choosing (who may be another City employee); however, the grievant must include the name of the representative, and state whether or not the representative is an attorney, on the Step 3 Employee Grievance Form at the time of submission. If the grievant is represented by legal counsel, the City Manager or designee may also be represented by counsel. All costs of employee representation shall be borne by the employee.
5. The City Manager, or designee, has the discretion to determine the propriety of attendance at the hearing of persons not having a direct interest in the hearing; and at the request of either party, the hearing shall be private. Grievance hearings cannot be recorded by tape, stenographer or any other means without the consent of both parties.
6. The City Manager, or designee, has the authority to determine the admissibility of evidence without regard to the burden of proof, or the order of presentation of evidence, so long as a full and equal opportunity is afforded to all parties for the presentation of their evidence.
7. If the City Manager, or designee, determines that additional evidence is needed to make an informed decision, he or she may continue the Step 3 hearing to hear such additional evidence.
8. The City Manager or his or her designee shall reply in writing to the grievant within 10 calendar days after the third step hearing.

STEP 4: Appeal Board or Grievance Panel

1. If the City Manager's decision is not acceptable to the grievant, he or she may, within 10 calendar days submit his or her dispute to the resolution of the ultimate authority available in this Grievance Procedure - either (a) the City Employee Appeal Board or (b) the City Employee Grievance Panel depending upon the nature of the particular grievance involved. Requests for further consideration of the grievance shall be made by completing the "Step Four Grievance Form" and submitting it to the Director of Human Resources.
2. Within 10 calendar days following receipt of the "Step Four Grievance Form" the Director of Human Resources, or designee, shall convene a non-public, informal hearing of the appropriate body (Board or Panel) for the necessary discussion, consideration, and resolution of the grievance.
3. As in Step 3, the aggrieved employee, his or her supervisor and the Department Director shall be present at the Board or Panel hearing, and appropriate witnesses

as well as representatives may also be in attendance. If the grievant desires testimony by a witness(es) who is scheduled for City duty, he or she will notify the respective Department Director at least twenty-four hours in advance; and if a witness(es) is not scheduled for City duty, the grievant will be responsible for arranging the presence of this witness(es). The appearance of witnesses before the Board or Panel is strictly voluntary. If the grievant intends to have a representative at the Panel/Board hearing, the grievant must include the name of the representative, and state whether or not the representative is an attorney, on the Step 4 Employee Grievance Form at the time of submission.

4. Subsequent to the hearing and within 10 calendar days thereafter the Chair of the Board or Panel will notify the grievant in writing of the decision of the respective body (Board or Panel). Copies of this written decision of the Board or Panel will be forwarded to the City Manager, the respective Department Director, the grievant's supervisor, and the Human Resources Department. A final determination by the Panel or Board must be consistent with law and written policies. Either party may petition the Circuit Court for implementation of the Panel/Board decision.

City Employee Appeal Board (Board)

1. The Board is charged with the responsibility of resolving any Step 4 grievance that involves the demotion, dismissal or suspension of 14 days or more of the aggrieved employee. Membership on the Board will consist of three citizens and two City employees selected in the following manner:
2. The three citizen members are selected from among a list of four appointed by the Lynchburg City Council for staggered three-year terms of office. These citizen members will elect a Board Chairman from among themselves. If any of the citizen Board members are unable to participate in a particular hearing, the grievant may either:
 - a. Accept a hearing before the two City employee members plus any two citizen members, wherever possible, of the Board; or
 - b. Elect to have his or her hearing continued until a maximum of five working days following the next regularly-scheduled City Council meeting when substitute citizen Board member(s) would be appointed for this particular grievance hearing. If only one citizen Board member is available to hear the grievance or if a tie should develop, the particular hearing will be automatically continued until such time that a hearing would be possible before a complete Board which includes two City employee representatives and three Council-appointed citizen members.

3. The two employee members will be one supervisory employee and one non-supervisory employee. Selection of these employees will be determined by an election held every two years in which all classified City employees, as eligible voters, will elect one list of 10 supervisory and one list of 10 non-supervisory personnel to serve as employee participants in the City's grievance resolution process. Following election, the names of the top five members on each separate list will be alphabetized and be used as the primary members. Those employees elected in positions six through ten on each list will serve as alternate supervisory and non-supervisory employee representatives.
4. The City employee members will be assigned to a Board, as needed, starting with the first name on each list. The next Board will include the second member on each list and this rotating basis will be continued at each successive Board as needed. When all names have been exhausted, each list will repeat itself in the same sequence. If an employee is not available, Human Resources will select the next name on the list to serve.
5. Alternate employee representatives will not be selected to serve on a Board unless the requisite number of employee representatives elected in positions one through five is not available to serve on the Board.
6. Note: Each of the two lists (supervisory and non-supervisory) of elected City personnel may not include more than two individuals from any single department. Nor will more than two individuals from the same department be included on any alternate list.
7. The Board shall not be composed of any individuals having direct involvement with the grievance being heard by the Board, or with the complaint or dispute giving rise to the grievance. Managers who are in a direct line of supervision of a grievant, individuals from the same department as the grievant, individuals residing in the same household as the grievant and the following relatives of a participant in the grievance process or a participant's spouse are prohibited from serving as Board members: spouse, parent, child, descendants of a child, sibling, niece, nephew and first cousin. In such situations, the Director of Human Resources shall designate the next person on the appropriate list to serve on the Board.
8. No attorney having direct involvement with the subject matter of the grievance, nor a partner, associate, employee or co-employee of the attorney shall serve as a Board member.

City Employee Grievance Panel (Panel)

1. The Panel is charged with the responsibility of resolving Step 4 grievances other than those types specified for resolution by the City Employee Appeal Board. Membership on this Panel will be comprised of a total of three persons: two City personnel members and one citizen; the chairman of the Panel will be the citizen member.
2. To achieve this composition, each of the four citizen appointees to the Appeal Board as identified above, serve on the Panel on a rotating basis from one hearing to the next. Should a member not be available, the next person on the list will be selected to serve.
3. The two City personnel Panel members shall be one supervisory employee and one non-supervisory employee according to the same alphabetical listing and scheduling arrangements as indicated for the City Employee Appeal Board. The specific employees filling these two membership positions will serve on a rotating basis from one Panel hearing to the next,

The system outlined above is designed to be an equitable and objective approach for designation of both Panel and Board membership in the final determination of employee grievances. It also provides a method by which the grievances of City personnel can be heard by an audience that includes both supervisory and non-supervisory representation from within the ranks of City employment and a high-level of citizen involvement as well.

XI. Rules for Grievance Panels

- A. Hearings before the City Employee Appeal Board and the City Employee Grievance Panel, both of which are referred to as "Grievance Panels," shall be conducted by the following rules:
 1. Grievance Panels do not have authority to formulate policies or procedures or to alter existing policies or procedures nor do they have the authority to award monetary damages, expenses or attorneys' fees to a successful grievant;
 2. Grievance Panels have the discretion to determine the propriety of attendance at the hearing of persons not having a direct interest in the hearing; and at the request of either party, the hearing shall be private. Grievance hearings cannot be recorded by tape, stenographer or any other means without the consent of both parties;
 3. The City must provide the Grievance Panel with copies of the grievance record prior to the hearing, and provide the grievant with a list of the documents

furnished to the Grievance Panel. The record shall include the Step 2 and Step 3 written decisions and all documents that were relied upon in the Step 1, Step 2 and Step 3 meetings;

4. The grievant and his attorney shall be allowed access to and copies of all relevant files intended to be used in the grievance proceeding, at least ten (10) calendar days prior to the scheduled hearing;
5. Grievance Panels have the authority to determine the admissibility of evidence without regard to the burden of proof, or the order of presentation of evidence, so long as a full and equal opportunity is afforded to all parties for the presentation of their evidence;
6. All evidence shall be presented in the presence of the Grievance Panel and the parties, except by mutual consent of the parties;
7. Documents, exhibits and lists of witnesses are to be exchanged between the parties at least three days in advance of the hearing. The appearance of witnesses before the Grievance Panel or hearing officer is strictly voluntary;
8. The majority decision of the Grievance Panel, acting within the scope of its authority, is final, subject to existing policies, procedures and law;
9. The decision of the Grievance Panel shall be provided to all parties within 10 calendar days after the conclusion of the hearing; and
10. Other provisions may apply, in order to facilitate fair and expeditious hearings, with the understanding that the hearings are not intended to be conducted like proceedings in courts, and that rules of evidence do not necessarily apply.

B. Implementation of the Decision

Either party may petition the Circuit Court of the City of Lynchburg for an order requiring implementation of the Step 4 decision.

XII. Maintenance of Grievance Records

Once a grievance is reduced to writing, the Department Director handling the grievance shall initiate a grievance file. This file shall contain copies of all forms, memoranda, letters, waivers, exhibits and/or summaries of all meetings and decisions rendered concerning the grievance. At the conclusion of the Second Step, the file shall be forwarded in its entirety to the Human Resources Department. As the grievance progresses through the various steps of the procedure, copies of all additional data shall be added to the file until the grievance is resolved. When the grievance is resolved the file shall constitute the official record of the grievance and shall be maintained by the Human Resources Department.